Office-Supreme Court, U.S.
FILED
MAY 24 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1599

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BASS AVIATION, INC.,

Petitioner,

v.

MARGARITA HERNANDEZ, *et al.*,

Respondents.

BRIEF OF PETITIONER IN REPLY TO BRIEF OF REPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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Petitioner Bass Aviation, Inc. (Bass) hereby replies to the briefs in opposition filed by respondent Linda Moyer and the Hernandez respondents.

ARGUMENT

A. The Significant Facts Are Not in Dispute. The Essential Issue Which Arises from These Facts Which Bass Asks the Court to Review Is:

Whether Contacts with Florida Residents in Alabama Constitute Sufficient Connection with Florida and the Cause of Action Permitting the Exercise of Specific Jurisdiction.

The Supplemental Statements of Facts filed by respondents add some detail to petitioner's Statement of Facts.

Respondent's Statements do not, however, dispute the essential fact that Bass did business in Alabama with Florida residents, but had limited contacts with Florida itself; and the contacts Bass did have with Florida had no connection with the cause of action alleged against it.

The only actual contacts of Bass with Florida were: that Bass Aviation had a Part 135 Certificate and permitted two Florida residents, International Jet Charter and Marine Holdings, Ltd., in Florida, to operate Bass-leased aircraft under Bass' Part 135 Certificate; that Bass had conducted its own charter operations to several places in the United States, including Florida and had stopped for fuel in Florida on several occasions; that one of Bass' pilots went to Florida to deliver an aircraft for long-term lease to a Florida resident; and that Bass placed advertisements in A/C Flyer, a nationwide publication with offices in Florida, through which Bass placed the advertisement by telephone from Alabama.

These contacts with Florida, however, had no connection with the cause of action alleged in the case at bar.

These contacts evidence neither continuous nor permanent ties with Florida such as were present in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). *See Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 104 S. Ct. 1868 (1984). Bass had neither offices nor maintenance bases nor employees working in Florida. None of the indicia or circumstances cited in *Perkins* (342 U.S. at 447-448) as a basis for the exercise of general jurisdiction are present in this case. Although respondents now claim that a basis for general jurisdiction exists, both respondents and Gates Lear Jet (a co-defendant in the trial court) claimed only specific jurisdiction in the court below under Florida long-arm statutes. *See* Brief of Respondents Hernandez, App. 4 - 22;[1] Brief of Petitioner, 23a-45a.

[1] The "alternative" basis for jurisdiction cited by respondents Hernandez related to a construction of the longarm statute of Florida by the Florida Supreme Court in *Ford Motor Co.* v. *Atwood Vacuum Machine Co.*, 392 So. 2d 1305 (Fla. 1981). Brief of Respondents Hernandez, App. 11 - 12.

Respondents' present argument that general jurisdiction exists has no basis in the undisputed facts found by the court below, and was not, in any event, raised by respondents or Gates Lear Jet in the court below.

Respondents do not dispute the fact that Bass did nothing in Florida which in any way related to the cause of action.[2] The aircraft involved was leased, delivered and maintained by Bass in Alabama. The accident occurred in Haiti.

Although the respondents disagree with petitioner as to the resolution of the issue, both respondents seem to agree that the issue before the Court is whether Bass' dealings in Alabama with Florida residents and Bass' knowledge that the subject aircraft would be taken to Florida were constitutionally cognizable contacts or connection

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[2] Respondent Moyer strains to bring some act of Bass into Florida which is connected with the cause of action. Respondent Moyer asserts:

> The pleadings below averred that Bass (1) negligently maintained the aircraft; (2) negligently failed to warn the decedent crew members of its unairworthy condition; and (3) was vicariously liable as owner of the dangerous instrumentality for the negligence claimed by each crew member against the other. Although transitory torts may be frowned upon for some purposes, the wrongful acts in (1) and (2) above, occurred in Florida as well as elsewhere, and the liability claimed in (3) arose during the flight from Florida prior to arrival at the aircraft's scheduled destination. An assertion of specific jurisdiction is proper under these circumstance.

Brief of Respondent Moyer, pp. 6-7.

Respondent Moyer may seem to be suggesting that Bass had an aircraft base or hangar in Florida to maintain the aircraft or lease the aircraft. This is absolutely not true, and Moyer is not asserting this as fact. Respondent Moyer is merely arguing that a duty to maintain and to warn follows the aircraft and since the aircraft was in Florida before the accident, Bass breached its duty there.

with Florida which related to the cause of action. *See* Brief of Hernandez Respondents, pp. 6-7; [3] Brief of Moyer, p. 6-7.[4]

Stated another way, were Bass' dealings in Alabama with Florida residents, such as Titanic and Moyer, acts "by which the defendant purposefully availed itself of the privilege of conducting activities within the forum state," (*Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958). *Accord*, *World-Wide Volkswagen Corporation* v. *Woodson*, 444 U.S. 286, 298 (1980)), and were such acts sufficiently connected with the cause of action brought against Bass based upon negligence?

Bass' dealings with Florida residents in Alabama had no connection with Florida itself. Titanic and Moyer sought

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[3] The Hernandez respondents claim: By entering into leases with Florida residents with the knowledge that the aircraft which were the subjects of the leases would be operated in Florida, and by advertising in Florida, BASS AVIATION purposely availed itself of the privilege of doing business in Florida. *See Mississippi Interstate Express, Inc.* v. *Transpo, Inc.*, 681 F.2d 1003, 1008 (5th Cir. 1982); *In-Flight Devices Corporation* v. *Van Dusen Air, Inc.*, 466 F.2d 220 (6th Cir. 1972).

> Further, Petitioner's contacts with Florida are connected with the cause of action. The cause of action is based on the crash of Lear Jet N211MB. This Lear Jet was leased by BASS AVIATION to TITANIC AIRCRAFT SALES & SERVICES, LTD., a corporation with its principal place of business in Florida and Petitioner knew the aircraft would be flown in Florida during the lease. (Pet. App. 4). The death of the Plaintiffs' decedent occurred during a flight which originated in Florida and terminated in the crash.

Brief of Respondents Hernandez, pp. 6-7.

[4] Respondent Moyer claims:

> The inquiry into whether a foreign corporation is subject to the jurisdiction of the forum State focuses upon the relationship among the defendants, the forum and the litigation. *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977). In this instance, Bass leased the aircraft in the custody of a Florida resident pilot, Charles Moyer, knowing that he was going to fly the aircraft to Florida, and the crash occurred while the aircraft was being flown from Florida. The decedents Charles Moyer and Rafael Hernandez and their survivors are all Florida residents. The relationship of the defendant, the forum and the litigation all dictate that the contacts of this defendant be sufficient.

Brief of Respondent Moyer, p. 6-7

out Bass in Alabama and negotiated and concluded a short-term lease there. The actions brought against Bass were not brought on the contract of lease. They were brought on the theory of negligence based on acts which, if they occurred at all, occurred in Alabama. The alleged acts of the defendant sued upon had no connection with Florida.

In finding specific jurisdiction over Bass based solely upon non-claim-related contacts between Bass and Florida residents in Alabama, the Court below rendered a decision contrary to the Court's holdings in *World-Wide Volkswagen* and its predecessors, and the recent decision of the Court in *Burger King Corporation v. Rudzewicz*, 53 U.S.L.W. 4541 (U.S. May 20, 1985).

In *Burger King*, the non-resident defendant had negotiated his franchise contract at least in part with Burger King officials in Miami by correspondence and telephone. The defendant had sought out and established a long-term business relationship with Burger King's Miami office and entered into a contract which not only provided that Florida law would control but also disclosed that suits concerning the agreement could be filed in Florida. The cause of action alleged against the defendant was based on the defendant's obligation to pay Burger King in Florida and the defendant's breach of that obligation.

The Court held that the defendant's dealings with the officials at the Miami headquarters of Burger King, his continuing contractual obligations to the Miami headquarters of the company and his acceptance of the provision that Florida law should control were purposeful acts by the defendant that "create a 'substantial connection' with the forum state." *Id.* at 4545.

In *Burger King* it was the defendant's purposeful activity with the forum's residents in the forum state (not outside the state, *see Travelers Health Ass'n. v. Virginia*, 339 U.S. 643 (1950)), which created the required "substantial connection" with the forum state. 53 U.S.L.W. at 4545. The breach of contract cause of action in *Burger King* arose out of or was related to "defendant's conduct and connection with the forum." *World-Wide Volkswagen*, 444 U.S. at 297.

In the case at bar, specific jurisdiction was found solely on the basis of a lease contracted in Alabama with Florida residents which had no connection with Florida other than the fact that Florida residents were involved, and which specifically provided that Alabama law was to control. The cause of action was not based upon a breach of that lease contract. It was based upon the alleged negligence of Bass in Alabama which allegedly resulted in an accident in Haiti.

Under *World-Wide Volkswagen* and *Burger King*, in order to obtain specific jurisdiction over the defendant, the defendant must do some purposeful act which is both connected to the cause of action and the forum state. Such a constitutionally required connection with Florida was absent in the case at bar.

B. The Jurisdictional Issue Before the Court is Important and the Ruling of the Court Below on that Issue is Final.

The Hernandez respondents argue that the issue presented for review is interlocutory and unnecessary to decide.

The issue of *in personam* jurisdiction comes to the Court from the Intermediate Court of Appeal of Florida in precisely the same posture as the *in personam* jurisdiction issue involved in *Calder* v. *Jones*, 104 S.Ct. 1482 (1984), came to the Court from the Intermediate Appellate Court in California. The Court stated in *Calder*:

> Although there has not yet been a trial on the merits in this case, the judgment of the California appellate court "is plainly final on the federal issue and is not subject to further review in the state courts." [cite] Accordingly, as in several past cases presenting jurisdictional issues in this posture, we conclude that the judgment below is final within the meaning of [28 U.S.C.] §1257. [cites]

104 S.Ct. at 1486 n.8.

On the issue of jurisdiction in this case, the judgment is final and ripe for review by the Court.

The Hernandez respondents suggest that inasmuch as a judgment has been obtained against a co-defendant, the

action may never proceed against Bass and, thus, the issue before the Court does not need to be decided. If, having obtained a judgment against a co-defendant, respondents dismissed their action against Bass with prejudice, petitioner Bass would agree that the issue Bass brings to the Court would be moot. However, the judgment debtor Insurance Company of Pennsylvania has appealed the judgment rendered against it on the issue of coverage. If reversed, respondents will be left with a default judgment against Execuflite, Inc., which has no assets and will have no insurance. In that event, respondents will be expected to press their claims against Bass in Florida and attempt to have Florida law rather than Alabama law apply to Bass' obligations and liabilities. The judgment against the co-defendant has no effect on the present petition.

CONCLUSION

For the foregoing reasons, and the reasons set forth in the Petition filed herein, petitioner urges that the Petition for a Writ of Certiorari be granted.

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Dated: May 24, 1985

CERTIFICATE OF SERVICE

I, Moffett B. Roller, being over the age of 18 years and a member of the law firm of Condon & Forsyth, hereby certify that I have, this twenty-fourth day of May, 1985, served three copies of the foregoing Reply upon the following parties, by mailing such copies to their attorneys of record in sealed envelopes, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C.:

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